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6 Attorneys for Defendant Mortgage  
Electronic Registration Systems, Inc.

7 UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF NEVADA  
9

10 CONNIE W. KWOK,

Case:

11 Plaintiff,

12 vs.

**PETITION FOR REMOVAL OF CIVIL  
ACTION**

13 RECONTRUST COMPANY, N.A.; BANK OF  
AMERICA; BAC HOME LOANS  
14 SERVICING, LP; MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
15 INC.; COUNTRYWIDE HOME LOANS,  
INC.,

16 Defendants.

17 TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
18 THE DISTRICT OF NEVADA:

19 The removing party, Mortgage Electronic Registration Systems, Inc. ("MERS" or  
20 "Defendant"), respectfully shows:

- 21 1. MERS is a Defendant in the above-entitled action.
- 22 2. That the above-entitled action was commenced in the Eighth Judicial District Court  
23 of the State of Nevada, in and for the County of Clark, and is now pending in that Court under the  
24 designated Case No. A-09-602928-C, Department XIII.
- 25 3. Process was served on MERS on February 1, 2010.
- 26 4. This case involves claims by Plaintiff that the Defendants improperly processed,  
27 serviced and transferred her home mortgage loan.  
28

1 This case is one of many that have recently been filed across the country by homeowners  
2 seeking to simply stall or delay foreclosure proceedings after the plaintiffs have long stopped  
3 making the required mortgage payments.

4  
5 5. This Petition for Removal is timely and proper under 28 U.S.C. §1446(b) because it  
6 is being filed within thirty days after MERS was served with a copy of Plaintiff's state court  
7 Complaint and within one year from when Plaintiff commenced her state court action.

8 6. Diversity jurisdiction under 28 U.S.C. §1332 exists because this action is between  
9 citizens of different states and/or countries and the amount in controversy exceeds \$75,000.

10 7. Plaintiff is a citizen of Nevada. Defendants are foreign entities.

11 8. The amount in controversy exceeds \$75,000. Plaintiff is seeking to void the real  
12 estate contract she signed when she purchased her home. Her Complaint is similar to many other  
13 complaints filed nationwide by homeowners facing foreclosure. Plaintiff's Complaint appears to  
14 allege that somehow the purchase money for the home, and subject to the mortgage contract, never  
15 actually changed hands. This type of complaint demonstrates a willful ignorance of how the act of  
16 borrowing money for a mortgage actually occurs.

17  
18 9. The removing defendant bears the burden of proving by a preponderance of the  
19 evidence that the amount in controversy exceeds \$75,000. *Singer v. State Farm Mut. Auto. Ins.*  
20 *Co.*, 116 F.3d 373, 376 (9th Cir. 1997). If it is "'facially apparent' from the complaint that the  
21 plaintiff seeks damages sufficient to create federal jurisdiction, then the case should be remanded  
22 'only if it appears to a legal certainty that the claim is actually for less than the jurisdictional  
23 minimum.'" *Davis v. Advanced Care Techs., Inc.*, 2007 U.S. Dist. LEXIS 32348 at \*3 (E.D. Cal.  
24 2007) (quoting *Singer*, 116 F.3d at 376); *see also Campbell v. Bridgestone/Firestone, Inc.*, 2006  
25 U.S. Dist. LEXIS 16113 at \*7 (E.D. Cal. 2006) (in products liability suit, amount-in-controversy  
26 requirement was satisfied where plaintiff sought unspecified amount of compensatory damages for  
27 wage loss, hospital and medical expenses, general damages, and loss of earning capacity); *Yong v.*  
28

1 *Hyatt Regency Sacramento*, 2007 U.S. Dist. LEXIS 9492 at \*3-4 (E.D. Cal. 2007) (where plaintiff  
 2 asserted a discrimination claim seeking “compensatory damages, emotional distress damages,  
 3 punitive damages, and attorneys fees,” the amount in controversy was well above the jurisdictional  
 4 requirement solely “by nature of [the plaintiff’s] claims”). Here, given the damages sought by  
 5 Plaintiff where Plaintiff is seeking to void a real estate contract, it is facially apparent from her  
 6 Complaint that the amount in controversy exceeds \$75,000.

8 10. This action may be properly removed to this Court under 28 U.S.C. §1441(a)  
 9 because this Court has original jurisdiction over this action under 28 U.S.C. §§1332 and 1367, and  
 10 because this action was commenced within the judicial district of the United States District Court  
 11 for the District of Nevada.

12 11. Copies of all process, pleadings and other orders served upon MERS are attached  
 13 hereto.

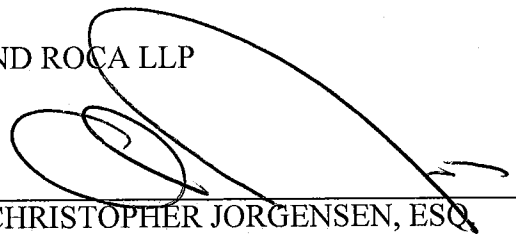
14 12. A true and correct copy of this Petition for Removal will be provided to Plaintiff  
 15 and filed with the Clerk of the Eighth Judicial District Court of the State of Nevada, Department  
 16 XXIII.

17 WHEREFORE, Defendant prays that this action be removed.

18 DATED this 17 day of February, 2010.

19 LEWIS AND ROCA LLP


20 By

21   
 22 J. CHRISTOPHER JORGENSEN, ESQ.  
 23 STATE BAR NO. 5382  
 24 DIANA S. ERB, ESQ.  
 25 STATE BAR NO. 10580  
 26 3993 Howard Hughes Pkwy., Ste. 600  
 27 Las Vegas, NV 89169  
 28 Attorneys for Defendant MERS

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing document was made on the 18 day of February, 2010 by depositing a copy for mailing, first class mail, postage prepaid, at Las Vegas, Nevada, to the following:

Edward G. Marshall, Esq.  
324 So. Third Street, #2  
Las Vegas, NV 89101  
Attorney for Plaintiff

  
an employee of Lewis and Roca LLP

MM

## District Court

CLARK COUNTY, NEVADA

FILED

NOV 04 2009

Jared K. Hohenberg  
CLERK OF COURT

10033 00893

CONNIE W. KWOK, Plaintiff,  
vs.  
RECONTRUST COMPANY, N.A.  
BANK OF AMERICA  
BAC HOME LOANS SERVICING, LP  
MORTGAGE ELECTRONIC REGIS-  
TRATION SYSTEM, INC.,  
COUNTRYWIDE HOME LOANS,  
Defendants

Case No.

A-09-602928-C

Dept. No.

XIII

JARED K. HOHENBERG

Certified Process Server

ID # 97-5-2

Date 2/1/2010

Served

Time 2:25pm

## SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

- File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
- Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted by:

*Edward G. Marshall*  
(Signature)

Name: EDWARD G. MARSHALL  
Address: 324 So. Third St. #2  
City/State/Zip: Las Vegas, NV 89101  
Telephone: 702/384-7162  
Attorney for: Plaintiff

By:

ALLISON BEHRHORS

Deputy Clerk

CLERK OF COURT  
DISTRICT COURT  
NOV 04 2009  
SEAL

Date

REGIONAL JUSTICE CENTER  
200 Lewis Ave.  
Las Vegas, NV 89155

NOTE: When service is by publication, add a brief statement of the object of the action.  
See Rules of Civil Procedure 4(b).

Revised 7/99/ljb

13425 2/1 AT 1:30 PM

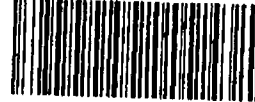
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FILED

NOV 0 4 2009

*John L. Sullivan*  
CLERK OF COURT

A-09-602928-C  
502203



1 EDWARD G. MARSHALL

2 324 S. Third Street #2

3 Las Vegas, NV 89101

4 TEL (702) 384-7162 FAX (702) 3846584

5 ATTORNEY FOR PLAINTIFF

6 NSB NO. 323

DISTRICT COURT

7

CLARK COUNTY NEVADA

8

) CASE NO: *A-09-602928-C*

9

) DEPT. NO. *XIII*

10 CONNIE W. KWOK

)

11 PLAINTIFF

) DATE OF HEARING: \_\_\_\_\_

12 VS.

) TIME OF HEARING: \_\_\_\_\_

13 RECONTRUST COMPANY, N.A.

)

14 BANK OF AMERICA

)

NOTICE OF LISPENDENS

15 BAC HOME LOANS SERVICING, LP.

)

16 MORTGAGE ELECTRONIC REGISTRATION )

17 SYSTEM, INC.

)

18 COUNTRYWIDE HOME LOANS

19 DEFENDANTS

20 \_\_\_\_\_ )

ARBITRATION EXEMPT

21

RECEIVED

TITLE TO REAL ESTATE

NOV 04 2009

CLERK OF THE COURT

## NOTICE OF LIS PENDENS

**TO ALL WHOM IT MAY CONCERN**

**PLEASE TAKE NOTICE** that an action at law has been commenced in the above entitled court by the Plaintiff(s) against the Defendants, and said suit is now pending.

The object of said action is to quiet title of Plaintiff against all persons and claims who allege any contrary interest therein.

Legal relief has been sought in said suit as pertains to certain real property and which affects the right, title and interest in and to said property.

The property so affected by this suit is described as follows:

6817 Woodland Vase Court, Las Vegas, NV 89131.

Assessor's Parcel Number 125-10-512-013 and having a legal description of Lot 1189 in Block A of Silverstone Ranch, Parcel 6N, as shown by map thereof on file in Book 117 of Plats, Page 64 in the Official County Records of Clark County, Nevada.

DATED THIS 4<sup>th</sup> DAY OF November 2009

Edward Marshall

EDWARD G. MARSHALL, ESQ.

**Attorney for Plaintiff(s)**

324 S. Third Street # 2

**Las Vegas, NV 89101**

II

1 EDWARD G. MARSHALL

2 324 S. Third Street #2

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5 ATTORNEY FOR PLAINTIFF

6 NSB NO. 323

DISTRICT COURT

7

CLARK COUNTY NEVADA

8

) CASE NO: A-09-602928-C

9

) DEPT. NO. XIII

10 CONNIE W. KWOK

)

11 PLAINTIFF

) DATE OF HEARING: \_\_\_\_\_

12 VS.

) TIME OF HEARING: \_\_\_\_\_

13 RECONTRUST COMPANY, N.A.

)

14 BANK OF AMERICA

) COMPLAINT FOR EMERGENCY

15 BAC HOME LOANS SERVICING, LP.

) INJUNCTIVE AND DECLARATORY

16 MORTGAGE ELECTRONIC REGISTRATION

) RELIEF AND TO STAY

17 SYSTEM, INC.

) FORECLOSURE SALE

18 COUNTRYWIDE HOME LOANS

19 DEFENDANTS

20 \_\_\_\_\_)

ARBITRATION EXEMPT

21

TITLE TO REAL ESTATE



1 Plaintiff sues Defendants for emergency injunctive and declaratory relief and to  
2 stay an imminent foreclosure sale, and states:

3 **A. Parties and Jurisdiction**

4 A. Plaintiff is of majority age and a citizen of the State of Nevada. The  
5 property that is the subject of this action is located at 6817 Woodland  
6 Vase Court, Las Vegas, NV 89131, hereinafter referred to as "the  
7 property" and is further described as Assessor's Parcel Number 125-10-  
8 512-013 and having a legal description of Lot 1189 in Block A of  
9 Silverstone Ranch, Parcel 6N, as shown by map thereof on file in Book  
10 117 of Plats, Page 64 in the Official County Records of Clark County,  
11 Nevada.

12 B. Defendant RECONTRUST COMPANY, N.A., hereinafter referred to  
13 as "RECON," is and was at all times material hereto, on information and  
14 belief, a Nevada corporation organized under the laws of the State of  
15 Nevada and acting as an agent of Defendants. Its address is 2380  
16 Performance Drive, Richardson, TX 75082.

17 C. Defendant BAC HOME LOANS SERVICING, LP, hereinafter referred  
18 to as "BAC" with offices located at 4500 Park Granada Blvd. Calabasas,  
19 CA 91302, is the alleged "servicer" of the loan in connection with a non-  
20 judicial foreclosure proceeding as to the Property. On information and  
21 belief, Defendant BAC has no legal interest in either the mortgage or the  
22 Note, the subject of this action.

23 D. Defendant BANK OF AMERICA, hereinafter referred to as "BOA," has  
24 taken over the assets and liabilities of Defendant COUNTRYWIDE HOME  
25 LOANS, hereinafter referred to as "COUNTRYWIDE," and upon  
26 information and belief has no legal interest in either the mortgage or the  
27 Note the subject of this action. Both Defendants BOA and  
28 COUNTRYWIDE are officed at 4500 Park Granada Blvd., Calabasas, CA

1 91302. Upon information and belief, Defendant COUNTRYWIDE is a  
2 corporation organized under the laws of Texas, and Defendant BOA is a  
3 corporation organized under the laws of California.

4 E. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,  
5 hereinafter referred to as "MERS," is a Delaware corporation with offices  
6 located at 3300 S.W. 34th Avenue, Suite 101, Ocala, FL 34474. Upon  
7 information and belief, MERS is named solely as a nominee Beneficiary  
8 in the Deed of Trust and is not a Party of Interest in the mortgage on the  
9 property and has no legal standing related to the property.

10 **B. Background**

- 11 1. Defendant MERS, through its agent Defendant RECON, instituted a non-  
12 judicial foreclosure proceeding to foreclose on a mortgage as to the  
13 Property, which mortgage was originally issued in the name of Defendant  
14 COUNTRYWIDE.
- 15 2. Upon information and belief, Plaintiff alleges that Defendant  
16 COUNTRYWIDE was not the lender and was only a middleman  
17 performing a service for a fee on behalf of a New York based entity which  
18 sold securities to raise the capital for Plaintiff's first mortgage. According  
19 to IRS rules, such entitled cannot own the mortgage collateral in the  
20 securitization pool without incurring significant tax liability. Plaintiff does  
21 not deny that a mortgage obligation was created. However, Plaintiff does  
22 deny that any obligation is owed to any of the Defendants in this action.  
23 Plaintiff does not know who the obligation is owed to, and Plaintiff does  
24 not know the amount of the obligation. (In case any Toxic Asset Relief  
25 Program (TARP) funds were applied to Plaintiff's mortgage, or other such  
26 funds as A.I.G. insurance proceeds.) Upon information and belief, Plaintiff  
27 alleges that Defendant COUNTRYWIDE was not in fact the Lender, and  
28 that Defendant COUNTRYWIDE had no risk of loss in this loan.

- 1           3. The same circumstances apply to the second mortgage purportedly also  
2           made by Defendant COUNTRYWIDE, but in fact made by some New York  
3           City Wall Street securitization entity that was not licensed to make  
4           mortgages in Nevada. Plaintiff requested information regarding the True  
5           Holder In Due Course of the Notes from Defendants in correspondence  
6           dated June 16, 2009, but Defendants have refused to divulge such  
7           information, a violation of law. Proof of the Current holder In Due Course  
8           of both notes has never been produced to the Plaintiff, and Defendants  
9           have failed to prove or even take the position that it is the holder of all  
10          rights under the Notes These would normally be the instruments of  
11          indebtedness which would permit the legal holder thereof to declare a  
12          default which would trigger a foreclosure. For the remainder of this  
13          Complaint, whenever the words Note or obligation are used, they are  
14          meant to apply to both mortgages. Even if the singular is used it is still  
15          intended to refer to both.
- 16         4. Defendants, who claim to be the "trustee" for the undersigned "certificate  
17         Holders" of mortgages which have been securitized, cannot establish that  
18         they hold the true ownership interest in the mortgage which is the subject  
19         of this action. They cannot establish that the true "Certificate Holders"  
20         have lawfully succeeded to such rights, or that they have legally assigned  
21         such rights to Defendants. The "rights" referred to include, specifically,  
22         the right to pursue a foreclosure of Plaintiff's rights.
- 23         5. Defendants cannot establish they have suffered any actual or threatened  
24         injury as a consequence of a default, if any, by Plaintiff. Such injury is  
25         legally required under applicable Nevada law in order for Defendants to  
26         satisfy the legal prerequisite that they have legal standing to foreclose on  
27         the Property.
- 28         6. By commencing a non-judicial foreclosure, Defendants have created a  
29         cloud of title on Plaintiff's property. This is the same property which is the  
30         subject of the mortgage originally funded by what is believed to be, upon  
31         information and belief, a New York securitization scheme.

1 7. Defendants have notified Plaintiff that the foreclosure sale on the Property  
2 has been scheduled to take place on November 4, 2009.

3 8. This Complaint is thus being timely filed in accordance with applicable law  
4 to challenge the foreclosure prior to the issuance of any Certificate of Title  
5 following sale. Upon information and belief, Plaintiff alleges that a  
6 severance of the ownership and possession of the original Notes and  
7 Deeds of Trust has occurred. The true owners and holders of both the  
8 original Notes and Deeds of Trust are unknown as a result of one or more  
9 alleged assignments and the parsed sale of certain rights under the Notes.  
10 Therefore, Defendants are legally precluded from foreclosing on the  
11 Property unless they can prove full legal standing to do so.

12 **C. Material Facts and Allegations**

13 9. Plaintiff hereby incorporates all allegations of the above paragraphs 1-8 as if  
14 they were fully stated.

15 10. Plaintiff is the nominal payor on the subject Notes. The Defendant "Loan  
16 Sellers" are financial institutions that were paid a fee to pose as residential mortgage  
17 lenders, when in fact the source of loan funds and the actual lender (Investors in  
18 Certificates) and underwriter (Mortgage Aggregator and Investment Banker) were other  
19 parties whose identities and receipt of fees and profits were withheld from Plaintiff at  
20 Closing and continue to be withheld from Plaintiff by the Defendants contrary to the  
21 requirements of applicable Law. Any reference to Lender or Lenders or Loan Seller in  
22 this Complaint refers to all Defendants and their agents and accomplices whether BOA,  
23 COUNTRYWIDE, BAC, RECON or MERS.

24 11. Plaintiff was, unknowingly, deceived into participating in a fraudulent  
25 scheme. Typically, in such transactions as this one, a Loan Seller acts as principal with  
26 so-called "independent appraiser" of the property. The Mortgage Broker and Mortgage  
27 Originator induced a homeowner into a transaction that does not and could not meet  
28 legal underwriting standards for a residential mortgage. The Loan Seller posed as a  
29 conventional Mortgage Lender, thus leading the homeowner to reasonably believe that

1 the Loan Seller, the Mortgage Broker and the Loan Originator all had an interest in the  
2 successful repayment of the loan.

3 12. In such transactions, the Loan Seller, the Mortgage Broker, the Appraiser, the  
4 Loan Originator, the Title Agent, Escrow Agent and Trustee on the Deed of Trust have  
5 no financial stake or liability in the transaction. They have no interest other than  
6 obtaining Plaintiff's signature on a loan that can, effectively, never be repaid because  
7 the mathematics render the scheme impossible, like a Ponzi scheme. This is because  
8 the appraisal was intentionally and knowingly inflated, together with the other loan data,  
9 in order to achieve the closing of the alleged "loan transaction."

10 13. Plaintiff relied upon the "due diligence" of the apparent Lender (who  
11 unknown to Plaintiff, was in fact the Loan Seller) in executing the closing documents  
12 presented for her signature. Upon information and belief, Plaintiff alleges that no real  
13 lender in the traditional sense was involved in the closing procedure because there was  
14 in fact no true lender, rather Investors-worldwide supplied the money that funded the  
15 loan

16 14. In executing and accepting the closing documents, the Plaintiff relied upon  
17 the 'due diligence' of the apparent Lender. Upon information and belief, no lender was  
18 really involved in the closing transaction in the sense of an entity or person performing  
19 due diligence and evaluation pursuant to national standards for underwriting and  
20 evaluating the risk of loaning money for a residential loan closing.

21 Upon information and belief, Defendants through their employees and agents,  
22 participated in a scheme whereby Plaintiff's income on the 1003 loan Application was  
23 falsified by stating whatever amount was necessary to approve the loan and collect  
24 fees. Plaintiff's income was close to \$50,000 per year, but Defendants, through their  
25 agents, stated Plaintiff's income as more than \$240,000 per year. This was done  
26 without the knowledge or consent of Plaintiff. This predatory lending act was  
27 specifically in violation of Nevada law, as set forth hereinafter.

28 15. Therefore, no bank or other financial institution (actually performing under the  
29 standards, rules, and regulations governing such institutions) was the supposed

1 "lender." The inflated appraisal added an undisclosed cost to the loan which, when  
2 considered with other terms of the loan, both disclosed and undisclosed, and amortized  
3 over the real expected life of the "loan," exceeded the limits of legal propriety. The  
4 presence of a financial institution, namely Countrywide (now Bank of America) was a  
5 ruse in which the form of the transaction misled the Plaintiff. Neither the real parties in  
6 interest nor the fees generated by the subject "loan transaction" were disclosed to  
7 Plaintiff.

8 16. The motivation of the Defendants was to collect fees, rebates, kickbacks and  
9 miscellaneous profits that were never disclosed to Plaintiff and of which she was  
10 unaware. Plaintiff has only recently discovered these facts.

11 17. CTC Real Estate Services was the original Trustee of the Deed of Trust  
12 which Plaintiff executed. Defendant RECONTRUST COMPANY, N.A. was  
13 subsequently substituted in as said Trustee.

14 18. Countrywide (now taken over by Defendant BANK OF AMERICA) was  
15 purportedly named as the lender of the transaction Plaintiff executed. However, the true  
16 lender was the New York (or other location) investor, and investors, who purchased the  
17 securitized instruments promoted by Wall Street investment bankers.

18 19. Upon information and belief, none of the Defendants have the Note which  
19 Plaintiff executed, and none of the Defendants are holders in due course of the Note.  
20 Consequently, all notices of default; acceleration and sale issued by the Defendants,  
21 and each of them, are legally invalid because they were not issued by a real part in  
22 interest. Therefore, due process of law has not been afforded to Plaintiff. This is so  
23 because NRS 107.080 (4) requires that a Trustee's sale must be conducted by a  
24 "person authorized to make the sale under the terms of the deed of trust."

25 20. Defendants do not meet the definition of a Lender as defined in NRS  
26 596D.050.

27 21. None of the Defendants own the lien which was created by Plaintiff's  
28 execution of the Note and Trust Deed.

1        22. Upon information and belief, without the knowledge of the Plaintiff, one or  
2 more of the Defendants, or Defendant's assignors, entered into Assignment and  
3 Assumption agreements with individuals or entities unknown to Plaintiff.

4        23. Additionally, upon information and belief, and without knowledge of the  
5 Plaintiff, one or more of the Defendants, or Defendants' assignors or entities entered  
6 into Pooling and Service Agreement with individuals or entities unknown to Plaintiff.

7        24. Upon information and belief, under the terms and procedures of these  
8 agreements:

9            A. The Loan Seller received a sum of money, usually or typically upon receiving  
10 an application for a loan equal to the gross amount of the loan sought by Plaintiff, plus  
11 an additional fee of 2.5 % or more. This occurred here. This fee was never disclosed to  
12 the Plaintiff.

13           B. Contrary to the documents presented to Plaintiff before and during the  
14 "closing of the loan transaction," the true loan seller was neither the source of funding  
15 nor the lender.

16           C. At the time of recording with the County Recorder of Clark County of the  
17 standard documents, the source of funding and the "Lender" was a different entity than  
18 the nominal mortgagee and the nominal beneficiary. The true identity of these parties  
19 was neither named nor disclosed, a violation of NRS 205.395.

20           D. The security for Plaintiff's "loan" thus secured an obligation that had in fact  
21 already been paid in full by an undisclosed third party or parties. The said third party  
22 was acting as a financial institution or "lender" without ever having been chartered or  
23 registered to conduct business in this manner, despite, and contrary to, rules and  
24 regulations set forth in NRS 645B.900 Plaintiff has been damaged by such violation of  
25 law.

26        25. Plaintiff has no idea who, if anyone, is the true holder in due course (if there  
27 is one) of the note related to the property of Plaintiff. Even though Plaintiff has



1 requested this information from Defendants, they have not complied with the request of  
2 Plaintiff. Such failure to respond is equivalent to refusal.

3 26. It is doubtful that any of the Defendants have any knowledge or have made  
4 any effort to determine whether the presumed holders in due course have been paid in  
5 whole or in part. It can only be said with certainty that these Defendants seek to  
6 enforce loan documents for which they have already been paid in full together with  
7 illegal fees for participating in an illegal scheme. These Defendants seek to add insult  
8 to injury by demanding, through foreclosure proceedings, ownership of the property in  
9 addition to already receiving full payment in full long before any delinquency or default  
10 even allegedly occurred.

11 27. In order for these Defendants to maintain legal standing in connection with  
12 the subject loan transaction they are required to show the entire chain of title of the Note  
13 and the entire chain of title of the mortgage. The plaintiff believes Defendants are  
14 unable to show such entire chain of title. Plaintiff concludes that the Defendants cannot  
15 produce such evidence of a complete chain of title or are intentionally withholding the  
16 information that would show breaks in such chain. Nevada law clearly defines a  
17 "lender" as one who currently holds a mortgage or an obligation. If the Defendants  
18 have sold the obligation, as Plaintiff alleges, then they are not a Lender. They are not a  
19 real party in interest and they have no standing to bring a foreclosure action.

20 28. There is no recording of any document in the Clark County records which  
21 predates the Defendants' attempt to initiate foreclosure and/or eviction or which would  
22 authorize them to proceed. See **Exhibit A** which is a simple diagram depicting the  
23 numbers of parties involved in the securitization process. However under the Doctrine  
24 of a Single Transaction, there are only two parties of interest in any mortgage. Those  
25 two parties are the Investor and the Borrower. All the other parties are simply middle  
26 men who have performed a service for a fee, but are not interested parties, and  
27 therefore have no standing in court to bring an action as required by NRCP 17.

28 29. At no time whatsoever did Defendants ever advise Plaintiff (nor, as far as  
29 Plaintiff can determine, any "investor" in certificates of mortgage-backed securities) that:



1 A. The mortgage loan being processed was not in Plaintiff's best interest;

2 B. The terms of the mortgage loan being processed were less favorable than the  
3 loan which Defendants previously advised Plaintiff she qualified for. Only at the last  
4 minute was Plaintiff's mortgage "switched" by Defendants. There was little chance of  
5 this type of loan ever being paid off short of winning a lottery.

6 C. That the mortgage loan was a temporary transaction (a transaction where  
7 terms, risks, or provisions at the commencement of the transaction differ at a later time)  
8 on which Plaintiff was providing cover for Defendants' illegal activities.

9 D. That Plaintiff would likely be placed in a position of default, foreclosure, and  
10 deficiency judgment regardless of whether or not she met her loan obligations once the  
11 true lender or true holder(s) in due course appeared;

12 E. That the Deeds of Trust instrument and Notes may be sold, transferred, or  
13 assigned separately to separate third parties so that the later "holder" of the Notes might  
14 not be in privity with, or have, the legal right to foreclose in the event of default on the  
15 Deeds of Trust.

16 F. That in connection with the future multiple down line sales and assignments of  
17 the Deeds of Trust and Notes, assignees or purchasers of the Notes might make  
18 payments on the Notes which would reduce the true amount owed by the Plaintiff on the  
19 Notes.

20 G. As a result of the closing and in connection therewith, Defendants placed the  
21 Plaintiff into a pool of a sub-prime adjustable rate mortgage programs, with Defendants  
22 intentionally misleading Plaintiff and the other borrowers and engaging in material  
23 omissions by failing to disclose to Plaintiff and other borrowers the fact that the nature of  
24 the mortgage loan applications had been materially changed without Plaintiff's  
25 knowledge or consent, Plaintiff was being placed into a pool where the usual loan was  
26 an adjustable rate mortgage program despite the fact that she was not being fully  
27 qualified for such a program.

1           30. Defendants and both their assignors and successors intentionally  
2 failed to provide Plaintiff with various disclosures which would indicate to the Plaintiff  
3 that the contract entered into was void, illegal, and predatory in nature. A "fixed rate"  
4 schedule of payments was provided which did not provide the proper disclosures of the  
5 actual contractually-due amounts and rates pertaining to the transaction.

6           31. Defendants, and/or Defendant's assignors, failed to provide Plaintiff with  
7 other relevant and necessary disclosures which are mandatory under Nevada law.

8           Plaintiff reasonably relied upon the good faith by the agents who transacted  
9 Plaintiff's loan. This reliance was betrayed in that such disclosures were not made.  
10 Had they been made, Plaintiff would not have entered into this transaction.

11           32. Defendants were under numerous legal obligations as fiduciaries and had  
12 the responsibility to oversee the loan transaction to insure that the same was legal,  
13 proper, and that Plaintiff had received all legally required disclosures. This trust was  
14 violated by the Defendants and their Assignors.

15           33. Defendants and their assignors engaged in a pattern and practice of  
16 defrauding Plaintiff in that, during the entire life of the mortgage loan, Defendants failed  
17 to properly credit payments made incorrectly calculated interest on the accounts and  
18 have failed to accurately debit fees.

19           34. At all times material Defendants had actual knowledge that the Plaintiff's'  
20 accounts were not accurate and that Plaintiff would make further payments based on  
21 Defendants' inaccurate accounts.

22           35. Unknown to Plaintiff her payments were based on the improper, inaccurate,  
23 and fraudulent representations as to Plaintiff' accounts.

24           36. As a direct and proximate result of the actions of the Defendants set forth  
25 above, Plaintiff overpaid in interest.

26           37. Defendants also utilized amounts (known to the Defendants to be inaccurate)  
27 in order to determine the amount allegedly due and owing for purposes of foreclosure.

1 39. On information and belief and given the volume of residential loan  
2 transactions solicited and processed by the Defendants, the Defendants have engaged  
3 in two or more instances of racketeering activity involving different victims but utilizing  
4 the same method, means, mode, operation, and enterprise with the same intended  
5 result.

6 40. Upon information and belief, Defendants typically steered unwary borrowers  
7 into subprime mortgages even when they might have been qualified for a prime  
8 mortgage. This was done because Countrywide earned more money from the Wall  
9 Street aggregators with a mortgage that had an economic interest rate adjustment  
10 "increase feature" to provide more revenue and bring a higher selling price to an  
11 investor.

12 41. Upon information and belief, consequently, the Defendants paid higher  
13 commissions to its agents to sell subprime mortgages that were in most cases destined  
14 to failure and default.

15 42. Upon information and belief, executives of Defendants were aware of this  
16 and continued the practice to make more profit without regard for the best interest of  
17 borrowers. Even so, agents of Defendants were trained with scripts to tell customers  
18 that they want to get "the best loan" for the customer. In Plaintiff's case she was  
19 steered into a negative amortizing adjustable interest rate loan. This type of loan can  
20 almost never be paid off.

21 43. NRS 205.372 (1) (a) protects the consumer from mortgage fraud where the  
22 lender commits fraud by misrepresentation or concealment of a material fact.

23 44. NRS 205.372 states that it is a violation of Nevada law to deliberately  
24 conceal or fail to disclose material facts. Receiving proceeds from such transactions  
25 *and conspiring with others in such transactions is also prohibited.* Other criminal  
26 statutes are relevant herein, as prohibiting the conduct in which Defendants are  
27 engaged.

1 Upon information and belief, plaintiff alleges that Defendants and their Assignors  
2 violated the statute by their actions as set forth hereinabove.

3 45. NRS 598D.100 has codified Nevada law and has made it illegal under  
4 subsection (c) as an unfair lending practice to make a "no doc" (no documentation) loan  
5 and under section (e) to make a "stated income" loan where the income of the Borrower  
6 is not evaluated.

7 46. Defendants violated Plaintiff's rights by making an unfair loan that Plaintiff  
8 was not qualified for, and which Plaintiff was not able to repay regardless of Defendants'  
9 assurances that refinancing would be available even when Defendant had no stake in  
10 the loan of Plaintiff. Defendants and their assignors were only interested in making fees  
11 by closing the loan.

12 47. NRS 598D.110 states that a lender who willfully engages in an unfair lending  
13 practice described in said chapter is liable to the borrower in an amount equal to the  
14 sum of: 2 (a), three times the amount of any actual damage sustained by the borrower,  
15 and 2(b), the costs of the borrower bringing the action and reasonable attorney fees.  
16 Here, by Defendants knowing willful participation in the securitization scheme including  
17 fraudulent appraisal inflation, the Plaintiff has lost at least an amount equal to \$00,000  
18 which when multiplied by 3 equals \$600,000.00 without counting the amount of equity  
19 that Plaintiff invested in the property as down payment and closing cost, and monthly  
20 payments, taxes, HOA dues, insurance, etc. Plaintiff seeks recovery of these damages  
21 from the Defendants.

## 22 First Cause of Action

### 23 1. Misrepresentation and Fraud by Omission

24 48. Plaintiff hereby incorporates the allegations of paragraphs 1 through 47  
25 inclusive as well as all other paragraphs herein as though the same were fully stated.

26 49. The corporate Defendants, their executives, employees, and agents  
27 committed fraud in direct violation of NRS 205.372 by failing to disclose to the Plaintiff  
28 the predatory, unethical and unsound and unfair lending and foreclosure practices, and

1 bonuses and inflated salaries paid pursuant thereto. Defendants were possessed of  
2 such duty to make such disclosure. The facts which Defendants failed to disclose were  
3 material to the mortgage documents, and to the Plaintiff's informed right to rescind.  
4 Defendants knew, and should have known, if these facts had been disclosed then  
5 Plaintiff would not have executed the subject mortgage documents and would have  
6 ceased to rely upon Defendants integrity and good faith. Plaintiff had she been fully  
7 informed would have rescinded.

8 50. Plaintiff innocently relied upon the false misrepresentations of the  
9 Defendants. Plaintiff was entitled to rely upon said misrepresentations. Defendants  
10 knew that their behavior was not in the best interest of the Plaintiff and Defendants  
11 knowingly took Plaintiff down a path of economic turmoil, suffering, and loss.

12 51.. Defendants failed to disclose their predatory, unsound, unfair lending  
13 practices, and Plaintiff by innocent reliance thereon has been damaged by such and  
14 continues to suffer damage today. Plaintiff seeks damages in excess of \$10,000 from  
15 Defendants.

## 16 **Second Cause of Action**

### 17 **2. Quiet Title**

18 52. Plaintiff hereby incorporates all the allegations of paragraphs 1- 51 inclusive  
19 and all other paragraphs, as though the same were fully stated herein.

20 53. The title to Plaintiff's property is clouded. That is, the Defendants or some  
21 other Defendant, named or unnamed which acted in concert with Defendants, or at  
22 Defendants' request or direction, recorded a Notice of Default and possibly other  
23 documents which indicate at least one of the defendants possess a security interest.

24 54. Plaintiff is unaware who are the actual holders in due course, if any, and the  
25 known Defendants are unable to produce a note showing they have an interest in the  
26 property with proper evidence of chain of title from start to present.

1 55. Plaintiff has clean hands and has behaved in an equitable manner.

2 Defendants have dirty hands and have not behaved in an equitable manner.

3 Defendants have affected severe harm on Plaintiff. Clearing title would not result in any  
4 unjust enrichment of Plaintiff, as Plaintiff has suffered damage in an amount in excess  
5 of \$10,000. The true amount is subject to being trebled pursuant to Nevada's anti-  
6 racketeering statutes. The amount owed by Defendants therefore exceeds any amount  
7 ostensibly owed per the Note and Deed of Trust executed by Plaintiff.

8 56. As a direct and proximate result, Plaintiff has been injured and damaged as  
9 described herein. Plaintiff is entitled to Clear Title. Any interest possessed or claimed  
10 by Defendants, or any entity acting in concert with the Defendants should be  
11 extinguished.

12 57. Plaintiff demands by this Complaint that the Deed of Trust must be rescinded  
13 and the subject loan transaction be canceled since the Notes have been severed from  
14 the Deeds of Trust..

15 58. Plaintiff is entitled to quiet title against subject Defendants, and clearing title  
16 of the purported subject mortgage encumbrance.

17 59. Plaintiff therefore seeks a declaration from this Court that the title to the  
18 subject property is vested in Plaintiff alone, and that the Defendants herein, and each of  
19 them, be declared to have no estate, right, title, or interest in the subject property and  
20 that said Defendants and each of them, be forever enjoined from asserting any estate,  
21 right, title, or interest in the subject property adverse to the Plaintiff herein.

### 22 Third Cause of Action

#### 23 3. Contractual Breach of Duty of Good Faith and Fair Dealing

24 60. Plaintiff hereby incorporates all the allegations of paragraphs 1- 59 inclusive  
25 and all other paragraphs, as though the same were fully stated herein.

26 61. Defendants owed to Plaintiff a contractual duty of good faith and fair dealing  
27 and a duty to restrain from frustrating the purposes of the mortgage contract.

1 Defendants directly assumed this duty and also by implication, which render the  
2 Defendants subject to suit, both in contract and in tort. This duty is implicit to all  
3 mortgage contracts. Mutuality of obligation existed per the subject contracts.  
4 Defendants' conduct violates the public policy of the State of Nevada by forcing  
5 mortgagors to strictly adhere to contracts that the Defendant mortgagees have  
6 breached.

7 62. Defendants breached this duty by engaging in predatory, unethical, and  
8 unfair, and unsound lending practices relative to other persons, e.g., members of  
9 statutorily protected classes of persons, and by failing to timely disclose these practices.

10 63. Plaintiff relied upon the material misrepresentations and omissions and  
11 concealment of material facts by the Defendants. Had this information disclosed to her,  
12 Plaintiff would not have executed the mortgage documents.

13 64. Plaintiff has been severely damaged as a direct and proximate result of the  
14 unlawful and unfair conduct of the Defendants. Plaintiff seeks damages in excess of  
15 \$10,000 therefor.

#### 16 Fourth Cause of Action

##### 17 4. Tortious Breach of the Implied Duty of Good Faith and Fair Dealing

18 65. Plaintiff hereby incorporates all the allegations of paragraphs 1- 64 inclusive  
19 and all other paragraphs, as though the same were fully stated herein.

20 66. Defendants breached the implied duty of good faith and fair dealing  
21 attendant to the subject contract in a tortious manner. Defendants, by virtue of the trust  
22 reposed by Plaintiff, are liable in tort.

23 67. As a direct and proximate result Plaintiff has suffered damage and seeks  
24 recovery in excess of \$10,000 therefor.

**Fifth Cause of Action**

**5. Civil Conspiracy**

68. Plaintiff hereby incorporates all the allegations of paragraphs 1- 67 inclusive and all other paragraphs, as though the same were fully stated herein.

69. Defendants entered into a conspiracy with other members of MERS, including the other named Defendants, for the common purpose of accruing economic gains for themselves at the expense of the Plaintiff (and other Nevada mortgagors.) The actions of the Defendants were committed intentionally, willfully, and wantonly, and with reckless disregard for the rights of the Plaintiff. This conspiracy has been ratified, and participated in by Defendants BAC and BOA by failing to inform Plaintiff and other Nevada mortgagors of their rights and continuing to collect monies and communicate with the Plaintiff and other mortgagors based on the false premise that fraud by omission has not occurred. Defendants continue to illegally foreclose homes and eject Nevadans from their homes notwithstanding knowledge of their own illegal conduct and unclean hands, and without making legally required disclosures to those being evicted.

70. As a direct and proximate result of the conspiracy of Defendants the Plaintiff has been harmed and damaged as described herein. Plaintiff thus demands from the Defendants restitution in the form of actual damages, exemplary damages, and legal costs, and attorney fees in excess of \$10,000.

**Sixth Cause of Action**

**6. Civil RICO and Racketeering**

71. Plaintiff hereby incorporates all the allegations of paragraphs 1- 70 inclusive and all other paragraphs, as though the same were fully stated herein.

72. NRS 207.390 defines racketeering activity as "at least two crimes related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, if at least one of the incidents occurred



1 after July 1, 1983, and the last of the incidents occurred within five years after a prior  
2 commission of a crime related to racketeering." The documents which Defendants, in  
3 concert with other corporate Defendants, obtained for the Plaintiff were part of many  
4 executed in Nevada from 2001 to 2008. Defendants engaged in racketeering, as  
5 prohibited by NRS 207 via the predatory and abusive lending practices described  
6 herein, and the repeated failure to disclose such - both relative to the Plaintiff and to  
7 other mortgagors as well. Defendants BOA has ratified the acts and omissions of  
8 COUNTRYWIDE and in so doing has ratified racketeering activity. The activities of the  
9 Defendants constituted an "enterprise" with the aim and objective of the enterprise  
10 being to perpetrate fraud upon the Plaintiff through the use of intentional nondisclosure,  
11 material misrepresentation, and creation of fraudulent loan documents. Each of the  
12 Defendants is an "enterprise Defendant."

13 73 As a direct and proximate result of the actions of the Defendants, the Plaintiff  
14 suffered and continues to suffer damage and harm in excess of \$10,000. Plaintiff is  
15 entitled, pursuant to NRS Chapter 207, to treble damages, attorneys' fees, and to an  
16 Order Quietening Title, and to other relief. Plaintiff seeks Judgment for such damages and  
17 relief.

## 18 **Seventh Cause of Action**

### 19 **7. Unjust Enrichment**

20 74. Plaintiff hereby incorporates all the allegations of paragraphs 1- 73  
21 inclusive and all other paragraphs, as though the same were fully stated herein.

22 75. As a direct and proximate result of Defendants activities the Plaintiff has  
23 been injured and damaged as described herein. Defendants have been unjustly  
24 enriched by their illegal and fraudulent actions. Plaintiff seeks recovery from  
25 Defendants in the form of damages in excess of \$10,000.

**Eighth Cause of Action**

**8. Conspiracy to Commit Fraud Related to the MERS System**

76. Plaintiff hereby incorporates all the allegations of paragraphs 1- 75 inclusive and all other paragraphs, as though the same were fully stated herein.

77. Upon information and belief, the corporate Defendants did knowingly conspire to engage in a scheme to promote, encourage, and facilitate fraudulent and predatory lending and foreclosure practices which eroded the national real estate market, including the Nevada real estate market. As a direct and proximate result the national real estate market, including the real estate values in Nevada have been substantially damaged and Plaintiff has thereby been harmed as alleged herein.

78. Upon information and belief, Defendants conspired with MERS and are or have been shareholders in MERS or members of the MERS system, and have acted to facilitate and further the unlawful goals of the MERS system.

79. Upon information and belief, the Defendants and MERS conspired to develop a system of earning profits from the origination and securitization of residential loans without regard for the rights of the Plaintiff. They have engaged in predatory and deceptive lending practices. They intentionally created, managed, operated and controlled the MERS system for the specific purpose of designating a sham beneficiary, i.e., MERS, or some other entity. The Defendants intentionally created, managed, operated and controlled the MERS system with the intent of rendering the task of identifying and holding responsible Defendants who engaged in these predatory lending practices difficult or impossible. They created and operated the MERS system to further a conspiracy.

80. Honorable Linda B. Reigle of the United States Bankruptcy Court for the Nevada Region has ruled on March 31, 2009 in the case of "In Re Joshua and Stephanie Mitchell," Case No. BK-S-07-16226-LBR, Chapter 7, MERS does not have legal standing to order a foreclosure sale on its own or through any other Trustee. . Additionally, Honorable Samuel C. Bufford, United States Bankruptcy Judge for the

1 Central District of California agreed with the ruling above as indicated in his opinion of  
 2 October 22, 2008 in the case of Defendant Vargas in case number LA08-17036-SB.  
 3 MERS takes no mortgage applications, makes no loans, holds no notes, and is not a  
 4 party of interest in these transactions, and has no standing in court to order a  
 5 foreclosure. MERS has cheated many county recording departments out of millions of  
 6 dollars for recording fees that should have been paid for the recording of assignments,  
 7 etc. The MERS system operates to perform a "whitewashing effect" to cover up  
 8 improperly executed documents, missing documents, forged documents, and defective  
 9 documents in an effort to make them legal. This is fraud.

10 81. Additionally, the Supreme Court of both Kansas and Arkansas have recently  
 11 ruled that MERS does not have standing to bring about a foreclosure action. See,  
 12 Landmark Bank v. Kesler 2009 KAN. Lexis 834. Also see, MERS v. Southwest Homes  
 13 of Arkansas, 2009 ARK. Lexis 121.

14 82. As a direct and proximate result of Defendants actions involving MERS,  
 15 Plaintiff has been damaged and seeks damages in excess of \$10,000.

#### 16 **Ninth Cause of Action**

#### 17 **9. Fraud by Obtaining Signature by False Pretences**

18 83. Plaintiff hereby incorporates all the allegations of paragraphs 1- 82  
 19 inclusive and all other paragraphs, as though the same were fully stated herein.

20 84. NRS 205.390 states that a person who, with intent to cheat or defraud  
 21 another, designedly by color or aid of any false token or writing or other false pretense,  
 22 representation or presentation obtains the signature of any person to a written  
 23 instrument is guilty of a category D felony and shall be punished as provided in NRS  
 24 193.130. In addition to any other penalty, the court shall order the person to pay  
 25 restitution.

1 85. Upon information and belief, Defendants have violated the law as it is  
2 prescribed in NRS 205.390 by obtaining Plaintiff's signature on the mortgage  
3 documents by false pretense and misrepresentation, and fraud of omission.

4 86. As a direct and proximate result of Defendant's unfair and illegal actions,  
5 Plaintiff has been damaged and seeks damages in excess of \$10,000.

6 87. Plaintiff seeks an Order of Restitution of all the monies that Plaintiff has  
7 expended and for restitution of all damages Plaintiff has sustained related to the  
8 fraudulent mortgage contract that Defendants enticed Plaintiff to sign. Such damages  
9 are in excess of \$10,000.

#### 10 Tenth Cause of Action

##### 11 10. Injunctive Relief

12 88. Plaintiff hereby incorporates all the allegations of paragraphs 1- 87  
13 inclusive and all other paragraphs, as though the same were fully stated herein.

14 89. Defendants caused Deeds of Trust to be executed and recorded which  
15 identified or substituted MERS as the "Nominee Beneficiary Only" regarding the subject  
16 property.

17 90. At the time the Plaintiff allegedly signed the Deeds of Trust she was without  
18 knowledge that MERS previously declared to Defendants, or some of them, that MERS  
19 would never hold a beneficial interest in any Deed of Trust. That is, the scope of MERS'  
20 declaration included the Deeds of Trust which Plaintiff executed.

21 91. Defendants, or some of them, knew, and should have known, prior to the  
22 presentation of the subject Deed of Trust, that the MERS' policy was to refrain from  
23 holding a beneficial interest in either the subject Deed of Trust or the subject property.  
24 Defendants, or some of them, knew, or should have known, that MERS' declaration to  
25 this effect was part and parcel of a conspiracy to violate public policy and the law.

26 92. Notwithstanding knowledge of MERS' deceptive and predatory business  
27 practices and declaration, Defendants used false and misleading representations to

1 Plaintiff, and failed to disclose to Plaintiff the MERS' declaration and the predatory and  
2 deceptive schemes orchestrated by MERS. Defendants thereby intended to cause  
3 Plaintiff to rely upon their representations, implied and direct, as well as upon their  
4 silence.

5 93. Plaintiff was entitled to so rely. Plaintiff remained uninformed of the  
6 operative and material facts as to the identity of MERS, and the relationship between  
7 MERS and the Defendants, and the conspiracy that MERS and the Defendants created  
8 and participated in. Plaintiff manifested this reliance by executing the Deed of Trust as  
9 well as other documents attendant to the mortgage contract.

10 94. Defendants deceived Plaintiff by creating a sham beneficiary pursuant to the  
11 Deeds of Trust. Defendants acted with illegal and actionable intent in derogation of  
12 public policy and the law. For instance, the designation of MERS as the beneficiary was  
13 intended by Defendants to render it difficult or impossible to identify the actual owner of  
14 beneficial interest holder of the Deed of Trust until such time as Defendants chose to  
15 designate the owner or beneficial interest holder pursuant to their predatory and illegal  
16 foreclosure. The designation of a sham beneficiary was intended to facilitate a possible  
17 wrongful foreclosure. By maintaining the fiction that MERS is a properly designated  
18 beneficiary, Defendants have violated NRS 205.372 and NRS 205.395 and NRS  
19 204.470.

20 95. The deception perpetrated by Defendants with regards to the Deed of Trust  
21 was part and parcel of a calculated scheme to defraud Plaintiff and others. This  
22 deception was intended to deny to Plaintiff and other Nevadans access to Nevada  
23 courts. Defendants knew of the illegality of their predatory lending scheme and,  
24 pursuant to the designation of a sham beneficiary, interposed a procedural roadblock so  
25 as to forestall an adjudication on the merits.

26 96. Defendants are therefore estopped from relying on the Deed of Trust. The  
27 designation of MERS as a sham beneficiary was not a clerical or inadvertent error. That  
28 designation is evidence of fraud and was part and parcel of a fraudulent course of

1 conduct. As a direct and proximate result of Defendants' actions, Plaintiff was harmed  
2 and damaged as described herein.

3 97. Plaintiff has repudiated the mortgage contracts via this lawsuit and via a  
4 refusal to honor the contract through continued payments. At this time, Plaintiff stands  
5 in technical default of the paper mortgage contracts and contends that the contracts are  
6 null and void pursuant to the legal principles stated herein, including estoppels, and  
7 pursuant to offset. That is, damages owed to Plaintiff upon being trebled pursuant to  
8 Nevada's anti-racketeering statute exceed the face value of the Plaintiff's alleged  
9 obligations.

10 98. The subject property is an important asset of Plaintiff. Plaintiff has owned  
11 the subject property for several years, and Plaintiff intends to continue to make the  
12 subject property an important asset for a long indefinite period.

13 99. Plaintiff will be subject to emotional and physical trauma and will be  
14 irreparably harmed if Defendants are allowed to exploit a Deed of Trust which was  
15 fraudulently obtained so as to deny Plaintiff the quiet enjoyment of this property through  
16 a wrongful foreclosure.

17 100. For the Court to allow Defendants to foreclose on Plaintiff's property would  
18 be a violation of NRS 205.380 which prohibits the obtaining of a property by false  
19 pretense.

20 101. Furthermore, NRS 645F.440 prohibits a foreclosure where there is fraud on  
21 the homeowner. This is a case where the Defendants have perpetrated fraud on the  
22 Plaintiff homeowner as described herein and the Court should not allow Defendants to  
23 unjustly enrich themselves again by illegally taking Plaintiff's home through a fraudulent  
24 wrongful foreclosure.

25 102. Nevada law is now codified in NRS 589D and does not allow loans to be  
26 made based upon stated incomes and no documentation, as these loans were. This  
27 type of lending practice is seen as de facto predatory in nature. Even though  
28 Defendants had the availability of IRS Form 4506T which clearly indicated that Plaintiff's

1 income was not qualified for these loans, nonetheless, Defendants approved the loans  
2 in a manner that Plaintiff relied upon Defendant's approval and expertise. Plaintiff was  
3 entitled to rely upon Defendants' approval of the loans.

4 103. NRS 107.085 limits the power of a Trustee to bring about a sale of real  
5 property in foreclosure where there has been unfair dealing. Plaintiff respectfully  
6 requests the Court to prohibit the Trustee from bringing a sale because of unfair  
7 dealing in the subject case.

8 104. As a direct and proximate result of Plaintiff's reliance upon Defendants'  
9 actions and omissions, Plaintiff has been damaged and harmed as herein described.

10 Plaintiff respectfully requests the court to temporarily and permanently enjoin  
11 Defendants from any foreclosure action, any eviction action, and any further negative  
12 credit reporting action, and that Defendants would forthwith remove any negative credit  
13 reports filed against Plaintiff related to this property.

#### 14 **Eleventh Cause of Action**

##### 15 **11. Declaratory Relief**

16 105. Plaintiff hereby incorporates all the allegations of paragraphs 1- 104  
17 inclusive and all other paragraphs, as though the same were fully stated herein.

18 106. Nevada Rule of Civil Procedure 17 requires all legal actions can only be  
19 filed by the real party in interest.

20 107. Upon information and belief, Plaintiff alleges that none of the Defendants  
21 are a Lender according to the definition of NRS 589D.050 which states that a Lender is  
22 a holder of a note or obligation. Again, in NRS 40.506 a secured lender is defined as a  
23 holder of a note. Upon information and belief, Plaintiff alleges that none of the  
24 Defendants is currently a holder in due course of any note related to the subject  
25 property. Plaintiff alleges upon information and belief that Defendants either sold the  
26 notes through a securitization scheme or were only middlemen using funds other than  
27 their own, and as such that all Defendants are not real parties in interest. Therefore they



1 have no standing to bring any action in this or any court against Plaintiff related to the  
2 subject property. Additionally, all notices received from Plaintiff from the Defendants  
3 are invalid and null and void and of no effect since the Defendants are not parties in  
4 interest and have no standing to issue such notices. Nor do Defendants have the right  
5 or authority to modify any loans or the terms of any loans, or conduct any foreclosure, or  
6 conduct any short sale of said property since Defendants are not currently parties of  
7 interest with standing to do anything related to the Plaintiff and the subject property.

8 108. NRS 30.040 gives the Plaintiff the right to have her rights clarified by a  
9 Court of law regarding the validity of the contracts allegedly executed with the  
10 Defendants.

11 109. Plaintiff is a person and a property owner of Nevada according to the  
12 statute NRS 30.020.

13 110. The Deeds of Trust and the Notes are a contract or an instrument  
14 according to the meaning of the statute NRS 30.040.

15 111. NRS 30.030 places this type of issue within the scope of this Court and the  
16 declaration of the Court shall have the force of a final judgment.

17 112. NRS 30.140 requires that declarations of the Court are to be remedial in  
18 nature and to settle and afford relief from uncertainty or insecurity in situations with  
19 respect to rights, status and other legal relations, and are to be liberally construed and  
20 administered.

21 113. THEREFORE, Plaintiff respectfully requests the Court to declare and issue  
22 an Order that Plaintiff is the rightful owner of record of the subject property which has  
23 been her property for several years.

24 114. FURTHERMORE, Plaintiff respectfully requests the Court to declare and  
25 issue an Order that none of the Defendants has any right, title, estate, interest, or other  
26 dealing with the subject property of the Plaintiff. The court should strike from the record  
27 of the Clark County Recorder any reference to any Deed of Trust or Note related to the  
28 subject property.



115. Plaintiff additionally respectfully requests the Court to issue an Order requiring Defendants to remove any negative credit reports against Plaintiff related to the subject property.

#### RELIEF SOUGHT

**WHEREFORE:** Plaintiff prays and demands Judgment herein as follows:

1. For damages in excess of \$10,000 on the First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action alleged hereinabove, and on each such numbered paragraph.

2. Additionally, punitive damages on the Fifth Cause of Action, and elsewhere hereinabove, as may be lawful and appropriate.

3. Additionally, treble damages according to proof to be shown on the Sixth Cause of Action.

4. For quieting of title in Plaintiff as to the real property which is the subject matter of this action at law.

5. For attorney's fees and costs.

6.. For Declaratory Relief.

7. For injunctive and equitable relief.

8. And for such other and further relief as is proper herein and as more fully specified in each paragraph foregoing.

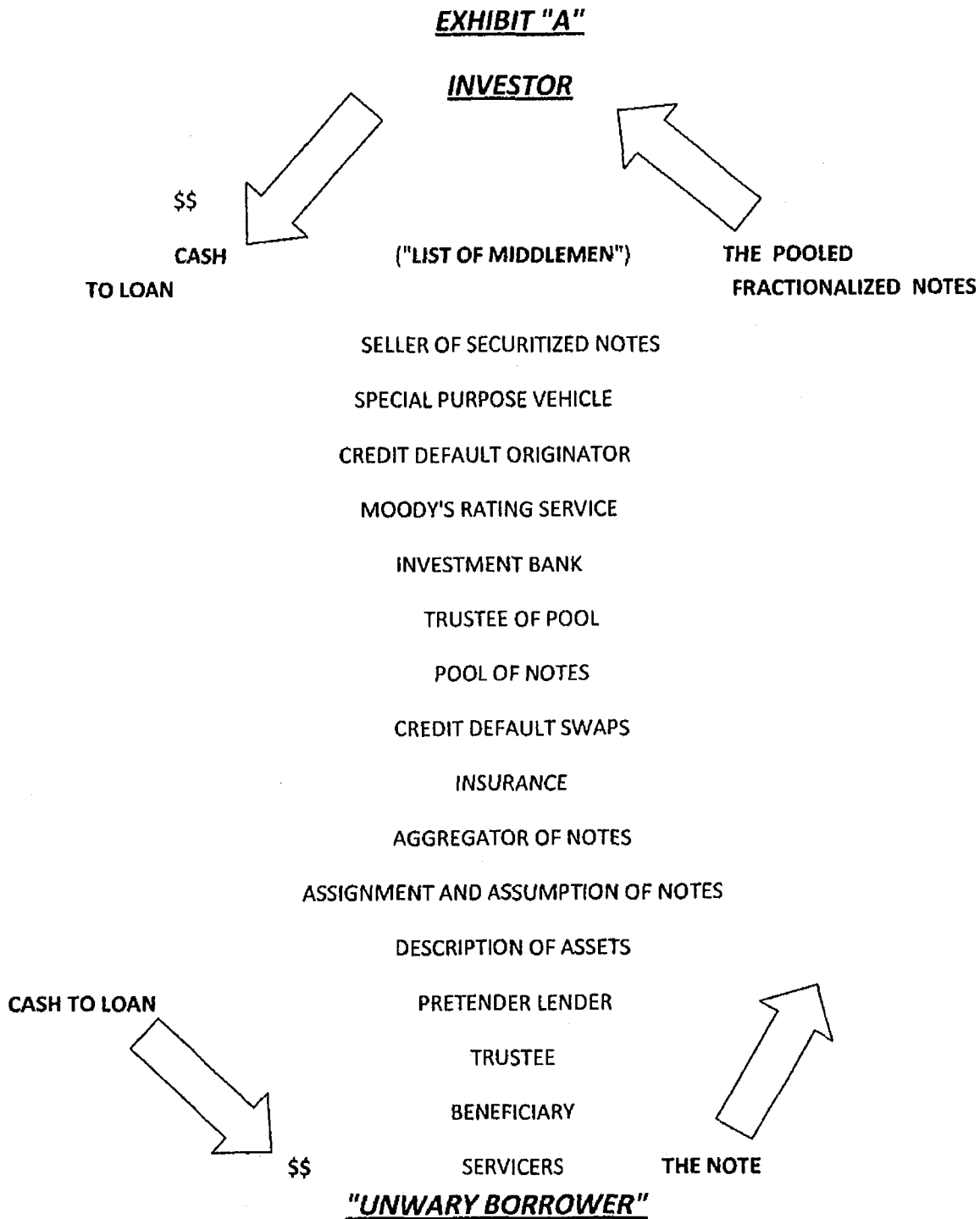
Edward G. Marshall date 4 November 09

EDWARD G. MARSHALL, Attorney for Plaintiff

#### DEMAND FOR A JURY TRIAL

Plaintiff demands a trial by jury of all matters so triable as a matter of right.

Edward G. Marshall



THERE ARE ONLY 2 PARTIES OF INTEREST IN EACH TRANSACTION, THE INVESTOR AND THE BORROWER.  
ONLY THE INVESTOR & THE UNWARY BORROWER ARE PARTIES OF INTEREST. ALL OTHERS ARE  
MIDDLEMEN WITHOUT AN INTEREST WHO ONLY PERFORM A SERVICE FOR A FEE AND TAKE A PROFIT.